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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1025

RICKY L. COCHRANE,
PETITIONER,

v.

HAROLD V. LANGLOIS, Warden,
RESPONDENT.

(Petition for Writ of Certiorari to the Supreme Court of Rhode Island)

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Opinion Below

The Order of the Supreme Court of Rhode Island is reported in 247 A2d 91.

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

Questions Presented for Review

1. Whether a petition for Habeas Corpus lies when there is another adequate remedy readily available to the petitioner?
2. Whether a petition for Habeas Corpus in Rhode Island Supreme Court is rendered moot when another remedy available to the petitioner, in family court, is used and petitioner is freed from the restraint which was the basis of his petition?
3. Is a State Statute which provides for the administrative transfer of a minor from a juvenile institution to an adult institution, and a transfer made in compliance with said statute, a violation of the 5th, 6th, 8th, and 14th amendments to the United States Constitution?

Statement of the Case

Petitioner, a minor, born on March 14, 1952, had a record in Family Court, the court having exclusive jurisdiction over juveniles in Rhode Island, dating back to August of 1964 and had been detained at the Rhode Island Training School for Boys on prior occasions.
23, 1967.

On October 2, 1967, the petitioner pleaded guilty to charges of delinquency involving the driving off of an automobile without the permission of the owner and possession of a switch blade knife. He was adjudged guilty on his plea and ordered detained at the training school until further order of the Family Court.

On December 28, 1967, General Sherman received a call from the Training School that the petitioner and another minor were destroying a cottage at the Training School, i.e., "B Unit" which was used for disciplinary confinement. General Sherman went to the Training School and

observed the destruction which was being wreaked by the petitioner and the other minors on the cottage, in tearing a cement block from a wall and breaking down six doors. Whereupon, General Sherman telephoned Chief Justice McCabe of the Family Court and was advised to transfer the minors to the Adult Correctional Institutions under his authority as Assistant Director of Correctional Services, Department of Social Welfare. General Sherman then orally ordered the minors transferred to the Adult Correctional Institutions under 13-4-12, General Laws of Rhode Island, 1956, as amended, and followed his verbal order with a written communication on December 29, 1967, also notifying the Family Court as required by the above statute.

On transfer to the Adult Correctional Institutions the petitioner was placed in the Reformatory building. The entire building consists of three floors of north and south wings, the second and third floors being dormitories. The second floor of the southern wing contains a medium sized dormitory and the further southern portion of this wing contains the cell block section called in prison vernacular, by the prisoners themselves, the "hole", because it is a place of confinement for disciplinary purposes.

Upon removal from the cell block, hereinbefore described, the petitioner was placed in the Maximum Security Facility where he was detained with adult prisoners. The only alternate to such an arrangement being detention within the cell block already mentioned on a segregated basis since there is no institution in Rhode Island other than the Rhode Island Training School for Boys and the Adult Correctional Institutions for confinement of a juvenile. There are no walls encircling the training school and the only place the petitioner would be confined at the training school was the "B Unit" which he was destroying at the time of his transfer. As will be noted from the

letter in petitioner's Appendix D, the petitioner was able to "run away" from the training school.

There has never been an evidentiary hearing on the Habeas Corpus petition filed by petitioner. Therefore, his "facts" concerning loss of weight, etc., have never been verified and are denied at this time for lack of knowledge concerning such claims.

While the petition was pending in the Rhode Island Supreme Court, the state learned that the petitioner had been freed of restraint by the Family Court. As soon as the state learned this fact, it informed the Rhode Island Supreme Court as set forth in that court's opinion.

Argument

I. Habeas Corpus Does Not Lie When Another Remedy Is Readily Available To The Petitioner.

There can be no doubt that another remedy was available to the petitioner in this case. As set forth in the opinion of the Rhode Island court in the petitioner's Appendix A, the Family Court, in response to action initiated on behalf of petitioner, ordered the petitioner returned to the training school from the adult institution on June 5, 1968 and released the petitioner completely on July 17, 1968 subject to probation. It is equally as obvious that this remedy could have been pursued at any time subsequent to December 28, 1967, when the petitioner was transferred to the adult institution.

It has long been the rule that a petition for habeas corpus will not lie when an adequate remedy is otherwise available. *Ex Parte Hawk,* 321 U.S. 114, (1944). This rule has been followed in Rhode Island, *Ex parte Scamporino,* 30 R.I. 587, 76 A. 761, (1910); *Ex parte Morey,* 28 R.I. 242, 66 A. 575, (1907); *Reynolds v. Langlois,* ....

R.I. ...., 209 A.2d 237, (1965); *Harris* v. *Langlois,* .... R.I. ...., 212 A.2d 715, (1965).

The other remedy in this case is that suggested by the Court in *Long* v. *Langlois,* 93 R.I. 23, 170 A.2d 618, (1961), i.e., a petition to modify the order of committment under 14-1-42, General Laws of Rhode Island, 1956.

The statute in question reads:

> 14-1-42. Modification of order of commitment — Release, detention, or recommitment of child. — An order of commitment made by the court in the case of child shall be subject to modification or revocation from time to time. A parent, guardian or next friend of a child who has been committed or assigned by the court to the custody of an institution, agency or person may at any time file with the court a verified petition, stating that such institution, agency or person has denied application for the release of the child or has failed to act upon such application within a reasonable time. If the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue. It may thereupon order that such child be restored to the custody of its parent or guardian or be detained in the custody of the institution, agency or person; and may direct such institution, agency or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require; or the court may make a further order or commitment.

It seems obvious from a reading of the above statute that it is more than an adequate remedy for a situation as presented in this case without recourse to habeas corpus in the Rhode Island Supreme Court. The phrase "If the

court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue," would have given the petitioner the "hearing" he so vehemently claims he should had. Ironically, too, it would afford a much more speedy mode of review of his order of commitment than that of seeking habeas corpus.

II. The Petition For Habeas Corpus Was Rendered Moot When Another Remedy Available To The Petitioner Was Used And Petitioner Was Freed From The Restraint Which Is The Basis Of His Petition.

Unlike *Sibron* v. *New York,* 392 U.S. 40, (1968), footnote 8, the argument of mootness is not being raised for the first time in this Court. As soon as the state became aware of the fact that the petitioner had been released in a proceeding in Family Court, it informed the Rhode Island Supreme Court. It is clear from that court's opinion that it was the action of the Family Court which rendered the case moot in the Supreme Court.

Petitioner quotes *Carafas* v. *LaVallee,* 391 U.S. 234 (1968) and *Sibron* v. *New York,* supra, in support of his argument that the issue in the present case is not moot. However, *Carafas* was a case involving the Federal Habeas Corpus statute which requires that the applicant must be in custody when the application is filed. Moreover, this Court said at page 238:

> "The substantial issue, however, which is posed by *Parker* v. *Ellis,* is not mootness in the technical or constitutional sense, but whether the statute defining the habeas corpus jurisdiction of the federal judiciary in respect of persons in state custody is available here ...."

In the present case the issue is mootness in the "technical, constitutional sense".

In Sibron, this Court qualified *St. Pierre* v. *United States,* 319 U.S. 41 (1943) by saying at page 57:

> "*St. Pierre* v. *United States,* supra, must be read in light of later cases to mean that a criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction..."

It is interesting to note also that *Sibron* was not a habeas corpus case but was an appeal of Sibron's conviction in the New York court.

The petitioner had not shown that he will suffer any "collateral legal consequences" as a result of his "challenged conviction" because he is a juvenile and because he is not challenging his conviction. As a juvenile he can not be convicted of a crime and he has no record (14-1-40, General Laws of Rhode Island, 1956, See appendix). He was originally detained at the training school upon his plea of guilty and he has never questioned that "conviction". His attack has been upon his transfer from the training school to the adult institution. Now he claims that the validity of the statute and the validity of the actions of the administrative officers cannot be challenged unless the petitioner remains at the adult institution while his petition is pending. This argument is specious because the Rhode Island Supreme Court is not the only court in which he can question the statute in question. Why not question its validity in family court? He has certainly availed himself of that court's jurisdiction many times. Why not avail himself of the Rhode Island Superior Court with its concurrent jurisdiction with the Supreme Court in habeas corpus petitions. (10-9-3, General Laws of Rhode

Island, 1956). If either of these two courses had been selected, we believe that the petitioner would have had a decision during the five months he was held at the adult institution.

Furthermore, Rhode Island has adopted the Uniform Declaratory Judgments Act which provides that "any person whose rights ... are affected by a statute ... may have determined any question ... of validity arising under the ... statute." (9-30-2, General Laws of Rhode Island, 1956, as amended).

The controlling point here, we believe, is what action would now be required by the Rhode Island Supreme Court if this case is not moot. There is no challenged conviction upon which the court can act. The court cannot order the petitioner freed from restraint — he is already free. The Rhode Island Supreme Court is being asked to act in a vacuum because the petitioner would like to test the constitutionality of 13-4-12. The respondent submits there are other and better ways to do it. That leads to another point. The respondent named in this petition is Harold V. Langlois, Warden. Harold V. Langlois is the warden of the adult institution. He had nothing to do with the transfer of the petitioner other than to receive him when he was transferred to the adult institution. It is difficult to conceive of any order the Rhode Island Supreme Court could issue as to the warden which would be meaningful in the determination of this case. Especially since the last word given by the petitioner as to his whereabouts is that as of October 12, 1968 he was on "a runaway status" from the training school. (letter, Petitioner's Appendix D).

III. 13-4-12, General Laws of Rhode Island, 1956, as Amended, is not Unconstitutional.

(b) A Fortiori, a Transfer in Compliance With Said Statute is a Constitutional Application of the Statute.

In order for the Rhode Island court to hold 13-4-12 un-

constitutional, it had to overrule *Long* v. *Langlois,* supra, which was decided in 1961, admittedly prior to *Kent* v. *United States,* 383 U.S. 541, (1966); and *In re Gault,* 387 U.S. 1, (1967).

But, *In re Rich,* 125 Vt. 373, 216 A.2d 266, (1966), cited by the petitioner, was decided in January of 1966, two months prior to the Kent decision. *State* v. *Owens,* —— Kan. ———, 416 P.2d 259, (1966) was decided after *Kent* but no mention is made of *Kent.* Moreover, *State* v. *Owens* is not in point at all because that case involved the authority of a juvenile court judge to confine juveniles to an adult institution *in the first instance.* It is that power the court is objecting to in the quote reproduced by petitioner at page 6 of his brief. Our point is that both Kansas and Vermont follow a different rule than outlined in *Long* v. *Langlois* and not because of *Kent* and *Gault.*

There are cases in other jurisdictions following the rule outlined in *Long* v. *Langlois,* supra. In *Wilson* v. *Coughlin,* ——— Iowa ———, 147 N.W. 2d 175, (1966), although the majority opinion does not mention *Kent,* the dissent quotes from it at length. It is clear then that *Kent* was before the court for consideration. In *Shone* v. *State,* ——— Me. ———, 237 A.2d 412, (1968), both the *Gault* and *Kent* cases are discussed, and the court, citing *Long* v. *Langlois* at page 180, concludes that there is no due process violation in the transfer of a juvenile from an institution for juveniles to an adult institution.

In *State* v. *Shone,* supra, a juvenile aged 15 was adjudged to have committed a juvenile offense by reason of his breaking and entering and committing larceny and was committed to the Boys' Training Center. He was transferred from the center to the Reformatory for Men for incorrigibility. Habeas corpus was brought based upon the same arguments as advanced by petitioner in the instant case. The court held at page 415:

> "Our transfer statute does recognize also that in certain circumstances sterner treatment and better security than are available in a training center for youthful offenders must replace the benevolent attitude initially displayed toward the juvenile delinquent. When a boy wilfully and presistently refuses to obey the rules and regulations of the center or if his continued presence therein may seriously impair its well-being, the whole purpose of the juvenile law would be in jeopardy and the legislative goal completely frustrated, if administrative authorities in charge had not the power to remove such recalcitrant or offensive inmate. The statute permits expulsion of those who insist upon the disruption of the institution's program of education and rehabilitation, not so much as a measure of punishment to the individual youth, but rather as a device for the protection of the juvenile center itself in the interest and general welfare of all those who submit willingly and obediently to its humanitarian curriculum."

In *Wilson* v. *Coughlin,* supra, the ensuing quote at page 177 shows how close in fact situation, the *Wilson* case is to the present case:

> "Being convinced petitioner's presence at the school would not be conducive to his welfare or the welfare of the other inmates of the school, the authorities decided he should be transferred to the reformatory for custodial care and treatment. On the 12th day of May, 1966, this application for such transfer was granted, and since that time he has been cared for in that correctional institution. Apparently the change of place of confinement is not to his liking and he asks us to find the transfer invalid."

After discussing the facts, the court then went on to say that, as in our case, there was no contention that the authorities had not complied with the provisions of the transfer statute. The court continued at page 179:

> "It must, therefore, be concluded petitioner's commitment to the state board of control for care and treatment was perfectly legal, was not criminal in nature, and left it in the position of his parent. Section 218.91 permitted the board, as such, to transfer an incorrigible child to the reformatory for his own benefit and protection, and in order to guard against any hasty or arbitrary action requiring approval of the district court before the transfer was completed.
> In making this transfer, the board is presumed to be performing a duty imposed upon it, that of restraint, education and reformation. It is not restraining the natural liberty of the child, but is placing him under a natural restraint, a restraint so far as is practicable as should be exercised by a parent. In other words, the severity of the restraint is governed entirely by the actions of the child resisting parental authority. It is not like the unnatural restraint of one convicted of a crime where the restraint is punishment. Rather it is only for so long as the child needs a firm restraining hand, and it may end any time the child shows a willingness to behave."

The Court not only cited *Long* v. *Langlois* case, as above, but went on to quote from it at length at page 180. It is also interesting to note the similarity of the transfer statutes in that the Iowa statute requires approval of the district court and the Rhode Island statute requires notification to the family court.

We reiterate, then, our previous argument — there is

no constitutional issue involved in an administrative transfer such as transpired in the instant case. The *Kent* and *Gault* cases have not changed the basic law involving such transfers. We are a step removed from *Kent* and *Gault* in the instant case, the hearing to adjudge petitioner a delinquent or wayward is not being attacked, only his transfer from one institution to another. The petitioner has failed to show that *Kent* and *Gault* have changed the basic premise of the *Long* case, i.e., that there is no constitutional issue involved in the transfer of a juvenile from a juvenile institution to an adult institution.

In closing, we note that the statute involved, 13-4-12, was amended in 1963, presumably, after the legislators had digested *Long* v. *Langlois* (R.I.P.L. 1963, Ch. 173, § 1). The only addition made was of two sentences, one providing for notification to the family court of a transfer, and the other providing for separation of the minor from the other inmates. There was no addition of a requirement of a hearing.

Conclusion

For the foregoing reasons the respondent asks that the petition for certiorari be denied.

Respectfully submitted,
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Appendix A

CHAPTER 14 — PROCEEDINGS IN JUVENILE COURT

14-1-40. Adjudication Not Having Effect Of Conviction. (1956 G.L.)

No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily resulting from a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall any child be charged with or convicted of a crime in any court, except as provided in this chapter. The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service application, examination or appointment.